

Administrative Office of the Courts

Supreme Court of New Mexico

Paula Couselo
Language Access Services



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)
www.nmcourts.gov

MEMORANDUM

TO: District Court Judges
Metropolitan Court Judges
Magistrate Court Judges
Court Executive Officers
Administrative Office of the Courts Program Staff

FROM: Paula Couselo, Language Access Services

DATE: July 22, 2016

SUBJECT: Guidelines for audio recorded, video recorded, or written materials in languages other than English – Rule 1-103(E)(8) NMRA

As the use of dash-cam video, lapel video, belt tapes, social media, wiretaps, and cell phone audio and video recordings increase in the courts, the demands on spoken and signed language interpreters to provide on-the-spot interpretations of these materials that are presented in languages other than English have greatly increased.

The guidelines herein seek to balance respect for best practices for interpreters with the challenges a court faces when confronted with recorded or written materials that require translation.

On-demand sight translation of complex recorded or written materials is often in conflict with recognized best practices and with the Codes of Professional Conduct of the interpreting profession, as well as the Supreme Court Rules of Criminal and Civil Procedure. Best practices are designed to create the greatest degree of accuracy of interpretations and translations.

Materials in a Language Other than English

To ensure accuracy, sound and video files that a party will use in court should first be transcribed in its source language and then translated to English by the party. Materials presented in signed language require the same steps in the opposite order – they must first be interpreted into spoken English, then the interpretation transcribed into written form.¹ This process must take place prior to the presentation of the materials. The case participants wishing to use the materials are responsible for assuring the materials are properly prepared in English and for paying the cost of such preparation.²

In accordance with the rules of evidence, the offering party must establish its translation witness's expertise in both English and the language other than English and the ability to translate from one to the other. If the party fails to provide testimony attesting to the accuracy of the translation, the court may not admit the translation.

Once approved by the parties and ruled admissible by the court, the written English rendition and a copy of the original material shall be provided to the court interpreter, if any, assigned to the court proceeding at which it will be introduced, with sufficient time to prepare for the court proceeding.

Materials in English

Audio and video files recorded in English that will be played in open court for a case involving a Limited English Proficiency (LEP) party or juror should be reviewed by the interpreter(s) who will be providing language services for that hearing prior to the proceeding.³

Court interpreters assigned to a given proceeding shall inform the judge if they are unable to provide an on-site interpretation of audio or video recordings, or sight translations of written documents in English. This can be due to:

- Length of material
- Quality of recording or legibility of written document
- Number of speakers or signers
- Variety of accents or regional variations
- Sufficiency of contextual information
- Degree of deviation from standard forms of language
- Level of audio or video intrusions and distractions
- Degree of technicality or specialization of vocabulary and content

The judge will consider the interpreter's opinion and decide whether to continue or proceed with the case. The factors listed above are the type of considerations taken into account when the judge determines whether the brief and/or non-complex nature of the materials permits on-site interpretation or, if not, what is a reasonable amount of time to provide for the interpreter to address the materials.

Interpreters as Expert Witnesses

Court Interpreters assigned to interpret during a given proceeding shall not be used as expert witnesses to evaluate, during that proceeding, the quality of a previously completed interpretation or translation provided for audio, video or written material originally in a language other than English. The party wishing to question or evaluate the quality of an interpretation or translation for the record shall arrange for a qualified individual to serve as an expert witness during the proceeding in accordance with NM rules of evidence.

Any questions regarding this matter or other questions regarding language access services please contact me at (505) 827-4853 or aocpvc@nmcourts.gov.



Paula Couselo-Findikoglu
Senior Statewide Program Manager
Language Access Services
NM Center for Language Access
New Mexico Administrative Office of the Courts

¹ Onsite Simultaneous Interpretation of a Sound File is Not Recommended, National Association of Judiciary Interpreters and Translators (NAJIT), 2006.

²“(…) the court is not responsible for providing court interpretation services for confidential attorney-client communications during a court proceeding, nor is the court responsible for providing court interpretation services for witness interviews or pre- trial transcriptions or translations that the party intends to use for a court proceeding. When the court is responsible for paying the cost of the court interpretation services, the AOC standards control the amounts and procedures for the payment of court interpreters.” Rules 1-103, 2-113, 3-113

³“The court shall allow the court interpreter a reasonable amount of time to prepare an accurate and complete translation or transcription and, if necessary, shall continue the proceeding to allow for adequate time for a translation or transcription.” Rule 1-103 (E) (8) NMRA.